

ATTACHMENT A: FINDINGS AND CONCLUSIONS

CITY OF EAST WENATCHEE SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted September 14, 2021, Ordinance No. 2021-14
Prepared by Department of Ecology on October 14, 2022

Use of this Document

Ecology's *Findings and Conclusions* (presented herein Attachment A), including references to Required and Recommended Changes (Attachment B), provides the factual basis for the Department of Ecology's (Ecology) decision on the City of East Wenatchee's (City) proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process; **Conclusions of Law**; and **Ecology's Decision and Effective Date**. Attachment B outlines Ecology's identified required and recommended changes to the SMP amendment.

Brief Description of Proposed Amendment

The City of East Wenatchee is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The City opted to use the standard review process in WAC 173-26-100 for this periodic review and associated amendment.

FINDINGS OF FACT

Need for amendment

East Wenatchee comprehensively updated their master program in April 2010. The City's SMP comprehensive update was completed in collaboration with Douglas County resulting in the City's adoption of the County's SMP.

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

The amendment will bring the SMP into compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis documenting the proposed amendment. East Wenatchee's SMP is a standalone document containing goals, policies and regulations. Critical area regulations are located in SMP Appendix H.

The SMP goals and policies are considered an element of the City's Comprehensive Plan. All other portions of the SMP are part of the City's development regulations. The SMP regulates shoreline uses and development along segments of the Columbia River within city limits.

The City originally adopted the Douglas County SMP outright and now proposes to modify text throughout the SMP to remove references to the County and other text unrelated to East Wenatchee and to add text more specific to the City. In addition to global change described above, updates of obsolete or incorrect citations/references, minor formatting changes, and the correction of typographical or grammatical errors, the following specific SMP sections are proposed to be amended:

Chapter 1. Framework, purpose, principles and applicability

Added and modified text related to the 2021 periodic review process. Removed text about regional planning that is not applicable to East Wenatchee SMP. Clarified the definition of “development.” Added text to describe exceptions and explain that SMP applies to non-federal lands and activities, and it does not affect treaty rights of Indian Nations or tribes. Updated effective date of the SMP.

Chapter 2. Goals and objectives

Added an objective to: “Balance wildfire safety and fuel reduction with shoreline buffer functions and values to prevent a net loss of ecological function.”

Chapter 3. Environment designations and management policies

Added text to better explain the Table 1 Use Matrix and made the following edits to the Use Matrix:

1. Changed recreational non-water oriented uses from conditional to permitted uses in High Intensity, Urban Conservancy, Mixed Use, and Shoreline Residential areas.
2. Changed shoreline stabilization and utility transmission uses from conditional to permitted uses in High Intensity, Urban Conservancy, Mixed Use, Shoreline Residential, and Rural Conservancy areas.
3. Changed certain utility uses (water systems, electrical generation, communication systems) from conditional to permitted uses in Urban Conservancy areas.
4. Added stormwater facilities as a conditional use in all shoreline areas.

Chapter 4. General policies and regulations

Added text regarding compensatory mitigation plan requirements and location preferences. Added regulations to specify limited clearing of native vegetation for fire protection near structures.

Chapter 5. Shoreline use and modification policies and regulations

Community and joint use docks sections modified to clarify that no more than one slip is allowed per lot. Regulation revised to clarify the precise number of docks, floats, buoys, and lifts allowed per lot and where they can be located. New provisions allowing covered moorage for emergency vessels provided no net loss of ecological functions and values.

New policies promoting increased recreational opportunities and access for those with disabilities and new regulation for water dependent recreation access consistent with the minimum requirements of the United States Access Board’s Accessibility Standards.

Added text to Chapter 5.12 to address nonconforming residential uses.

Removed rural density standards from Regulation 9 and referenced the City zoning code and comprehensive plan. Clarified that submerged lands shall not be used in density calculations for waterfront parcels. Removed side yard setbacks from Regulation 11 and Table 2.

Chapter 6. Administration and procedures

Revised text to state that the SMP revisions will become effective 14-days from Ecology’s written notice of final action to the City.

Chapter 7. Permit processing procedures

Added essential public facilities to list of activities requiring full administrative review. Added text clarifying that the Administrator may elevate a shoreline substantial development permit application to quasi-judicial review based upon the size and scope of the project.

Chapter 8. Definitions

Several definitions added or revised for clarity and consistency, including: Accessory; Appurtenant; Cluster development; Delineation; Development; Hydric soil; Nonconforming use, structure, lot; Off-site mitigation; Road; Wetland delineation.

Appendix H, Critical Area Regulations

Numerous text changes proposed to make Appendix H consistent with the City's current critical areas ordinance and to incorporate updated Ecology wetland guidance. Added new provisions separate from variance provisions identified in chapter 6.8 of the SMP.

Wetlands

- Reference maps and inventories section updated with more current references. Definitions updated to match critical area ordinance. New section added explaining interagency coordination processes.
- Added the Washington State Wetland Rating System for Eastern Washington 2014 as the standard for wetland rating requirements.
- Removal of 10 year monitoring requirement for emergent wetlands or riparian vegetation to be consistent with city's CAO requirements.
- Removed specific requirements for developments such as subdivisions to show wetlands on final plats and mark outer edge of required buffers.
- Decreased standard buffer widths for type 1, 2, and 3 wetlands to be consistent with the CAO and Douglas County's SMP regulations. Formatted buffers in a table and separated out standard buffers from high intensity development buffers.
- Added provisions for wetland buffer, common line, and front yard setback reductions.

Fish and wildlife habitat

- Addition of specific standards for docks and road repair/construction.
- Language added clarifying irrigation and artificial features not considered FWHCAs.
- Removal of 10 year monitoring requirement.
- Modified mitigation requirements associated with increased buffers.
- Added minimum width standards for buffer width averaging, buffer reduction for front yard setbacks, and common line buffer reduction.
- Revised access corridor provisions for clarity.

Aquifer Recharge Areas

- Designation, missing description of Area A has been added.
- Added requirement for major developments to connect to a public sanitary sewer or approved community system.

Amendment History, Review Process

Local SMP Amendment Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. Another element of the public

participation plan is the City's SMP Periodic Review project website. The City hired a consultant who developed draft documents and assisted the City through the update process.

The City used Ecology's Periodic Review checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines, that have occurred since the master program was comprehensively updated, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the SMP policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii).

A public open house was held April 27, 2021 and a public hearing was held May 25, 2021. Notice of the hearing was published in the Wenatchee World on May 12, 2021.

Department of Commerce was notified of the City's intent to adopt on April 12, 2021. The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on May 7, 2021 for the proposed SMP amendment. Ecology did not comment on the DNS.

One comment letter was received during the local adoption process from the Washington State Department of Fish and Wildlife (WDFW). The City provided Ecology with copies of the preceding email correspondence between City staff and WDFW along with the subsequent May 11, 2021 formal comment letter prepared by WDFW Area Habitat Biologist Eric Pentico. The comment expressed WDFW's appreciation for the City's early and continued coordination and inclusion of their previous recommendations. They had no further comments to provide regarding the SMP periodic review. They did highlight the recent completion of WDFW's *Riparian Ecosystems, Volume 1: Synthesis of the Science* and *Volume 2: Management Recommendations* and let the City know that they would like to discuss these documents with them in the future.

With passage of Ordinance No. 2021-14 on June 15, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal review.

Ecology SMP Amendment Review and Approval Process

As part of this review, the City chose to utilize the standard review process set forth in WAC 173-26-100. After the City completed the SMP periodic review process and locally adopted the associated SMP amendment, the City submitted the amendment and its adoption record to Ecology for final agency approval as outlined in WAC 173-26-110.

The proposed SMP amendments were received by Ecology for state review and verified as complete on September 14, 2021.

When the local government opts to use the standard process of WAC 173-26-100, Ecology must follow the procedures of WAC 173-26-120(2) to provide reasonable notice and opportunity for written comment. Notice of the state comment period was distributed via email to state and local interested parties, identified by the City, on September 29, 2021, in compliance with the requirements of WAC 173-26-120. The Colville, and Yakama tribes were individually invited to comment and to consult government to government, as needed. The state comment period began on October 7, 2021 and continued through November 5, 2021.

Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views was provided on Ecology's [website](#)¹ and as part of the written notice. Ecology received no comments during the comment period.

Consistent with WAC 173-26-120(3)(a)(iii) the state process for approving/amending shoreline master programs, Ecology must either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with the Shoreline Management Act (SMA) or guidelines (WAC 173-26), or deny the proposal if no alternation of the proposal appear likely to be consistent with the SMA.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) May 7, 2021 for the proposed SMP amendment.

Other Studies or Analyses supporting the SMP amendment

We reviewed the periodic review checklist and staff reports prepared in support of the amendment.

Summary of Issues Identified by Ecology as Relevant to Its Decisions

Ecology is required to review all SMPs to ensure consistency with the SMA and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendment to the SMP for consistency with applicable SMP Guideline requirements and the SMA, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology's final decision on the proposed amendment:

SMP Implementation challenges

Chapter 5 Shoreline Use and Modification Policies and Regulations subsections (11) and (12) propose new allowances for water dependent recreation and residential access that lack the clarity necessary for implementation. [Attachment B, Item Req-1 and Req-2].

¹<https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/East-Wenatchee>

Permit Processing Procedures

SMP Section 7.3.060(5) provides the notice of final decision process for filing final shoreline permit decisions with Ecology. The proposed amendment inserts an inaccurate Washington Administrative Code (WAC) reference into this provision. Ecology finds that only WAC 173-27-130, as amended should be referenced here. WAC 173-27-044 is related to developments not required to obtain local review or permits which is not applicable to this permit filing provision. Ecology finds that the addition of this WAC reference is not appropriate and should be removed [Attachment B, Item Req-3].

Definitions

The updates to Appendix H included a set of new critical areas definitions. Some of these definitions are inconsistent with existing definitions in the SMP. As written, the duplicate definition section creates inconsistencies and difficulties for implementation of the SMP. Ecology finds that the new definitions create internal inconsistencies between the main body of the SMP and its critical area appendix. Specific definitions in WAC 173-26-020 and RCW 90.58.030 are to be used if included in the SMP. This issue is resolved with the removal of the definition section from Appendix H and the addition of applicable critical areas definitions into SMP Section 8. [Attachment B, Item Req-4 Part 1&2, Rec-1].

Appendix H, Critical Areas - Wetlands

Consistent with Ecology's current guidance on wetland protection, the City has modified SMP section 1B.020 F.3 to include updated wetland category and rating scores. However, it appears that the section for Category III wetlands was deleted, and no new language was added. Ecology finds that as proposed the missing language creates an inconsistency with Ecology's 2014 rating guidance. The appropriate information for Category III wetlands shall be added [Attachment B, Item Req-5].

Appendix H, Critical Areas – Buffer reductions

The City proposes to add wetland buffer reduction allowances to Appendix H 1B.040 (F) & (G) and SMP Section 5.13 to allow administrative buffer width reductions and common line buffer reduction methods. The City also proposes similar Fish and Wildlife Habitat Conservation Areas buffer reduction allowances in Appendix H 1C.040 (C.8).

Buffer averaging is a technique that can be used for development on constrained sites while still protecting wetlands. Allowing buffer reductions without buffer averaging could allow impacts that result in a loss of shoreline ecological function (see [Granger et al. 2005](#), [Hruby 2013](#), [Bunten et al 2016](#)). Ecology finds changes are necessary for consistency with the SMP critical areas protection standards (WAC 173-26-221) and internal SMP consistency. Ecology finds that changes are necessary for consistency with the requirement to "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available" [WAC 173-26-201(2)(a)]; and the requirement that protection of critical areas "assures no net loss of shoreline ecological functions" [WAC 173-26-221(2)(a)(ii)]. [Attachment B, Items Req-6, Req-7, Req-8, and Req-13].

Appendix H Critical Areas - Setback reductions

The City proposes new allowances for front yard setback reductions intended to allow these provisions to be varied in an effort to avoid or reduce fish and wildlife habitat conservation areas and/or wetland buffer intrusion. This allowance does not reduce the fish and wildlife habitat conservation areas buffer or wetland buffer, but instead the zoning code required setback for a property. While this is a reasonable and even preferred minimization measure, these setbacks are not regulations of the SMP, so

the allowance here would be more appropriately addressed in the City's zoning code. Ecology finds that the new reduction allowances are not applicable to provision found within SMP. As written the SMP does not regulate property line or yard setbacks therefore this allowance for reduction is not an appropriate provision of the SMP [Attachment B, Items Req-9 and Req-12].

Critical Areas Regulations - Variances

The City has proposed numerous changes to Appendix H in an effort to provide consistency between the critical area protection standards between the SMP and the City's critical areas ordinance (CAO). As a result, some incompatible sections of the City's CAO have been proposed for inclusion in the SMP. Proposed wetland sections 1B.070 and 1B.080 along with fish and wildlife habitat conservation area sections 1B.070 and 1B.080 revise language to add a separate variance permit process and include standalone requirements for projects that cannot meet these critical areas standards.

As required by the Growth Management Act (RCW 36.70A.480(3)(d)), "critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter..."² This requirement means critical area reviews for activities in shoreline jurisdiction occur within the context of the SMP permitting procedures.

Ecology finds that a change is necessary for consistency with RCW 90.58.610 and RCW 36.70A.480, which govern the relationship between SMPs and CAOs. Within shoreline jurisdiction, critical areas are protected solely by the SMA and the SMP and authorizations of development and uses in shoreline jurisdiction that may involve shoreline critical areas must follow the administrative and permitting provisions of the SMP. In the SMP, a shoreline variance permit is the mechanism for varying bulk dimensional standards as identified in WAC 173-27-170. Ecology finds these provisions *are inconsistent with the permitting framework of the SMA established in RCW 90.58.140 and WAC 173-27*. [Attachment B, Items Req-10, Req-11, Req-14, and Req-15].

Coordination with the City regarding Ecology's Required and Recommended Changes

We met with City staff on multiple occasions during the state review of this locally adopted SMP amendment to resolve the consistency issues identified above. We came to agreement on most the required changes and requested clarification and guidance from the City regarding how to address our concerns with the issues identified in required changes 1, 2, and 4. As a result of this coordination, on May 26, 2022, the City provided us with a memo outlining their proposed language regarding the residential and recreational regulations in SMP Section 5.11 and 5.12. The memo also stated the City's preference to address the issue with duplicative and conflicting definitions by removing the definition section from Appendix H and including applicable consistent definitions from Appendix H directly into SMP Section 8 where the other SMP definitions are located [Attachment B Req-4 part 1 and 2, and Attachment B Exhibit 1]. We then updated Attachment B to include our agreed upon required and recommended changes.

CONCLUSIONS OF LAW

After a review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment, with incorporation of Ecology's required change as shown in Attachment B,

² See also RCW 90.58.610

can be considered consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment, with the inclusion of required changes identified in Attachment B, satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(2)(c)(i)) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-100, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-100, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments will be consistent with the policy of the Shoreline Management Act and the applicable implementing rules, once the required changes set forth in Attachment B are accepted by the City.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit additional alternatives to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment. The City may choose to adopt the recommended changes in Attachment B. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of the recommended changes.

Ecology approval of the proposed amendment, with required changes or approved alternative language, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes and recommended changes identified in Attachment B.